

### **REMARKS/ARGUMENTS**

The Applicants originally submitted Claims 1-20 in the application. In a previous response, the Applicants canceled Claims 15-20 without prejudice or disclaimer and added Claims 21-26.

In view of the Final Rejection of November 29, 2007, and the telephonic interview with the Examiner on January 23, 2008, the Applicants amend Claims 1, 8, 21 and 24 in the present preliminary amendment to, for example, clearly indicate that "Idle symbols" are defined according to a packet transmission standard. Support for the amendment can be found at least in the original application on: page 7, lines 3-16; page 11, lines 6-13 and page 12, lines 4-17. Claims 1-14 and 21-26 are currently pending in the application.

#### **I. Formal Matters and Objections**

The Examiner objected to Claim 21 because of informalities; namely, the limitation regarding the encoder effectively requires idle symbols being replaced by idle symbols in the interpacket gap. The Examiner further states, there is no purpose for such a replacement and the specification clearly teaches that some of the idle symbols are replaced by non-idle symbols for the purpose of transmitting out of band control information. (*See Examiner's Final Rejection, page 2.*) Without commenting on whether the Applicants agree with the Examiner's objection, Claim 21 has been amended to include that the "at least one message symbol is decoded as an Idle symbol according to said Ethernet standard." Thus, the encoder of amended Claim 21 allows at least part of a message to be transmitted in an interpacket gap while still complying with an Ethernet standard.

As such, the Applicants respectfully request the Examiner to withdraw the objection of Claim 21 and allow issuance thereof.

## **II. Rejection of Claims 1, 2, 5 and 7 under 35 U.S.C. §103**

The Examiner rejected Claims 1, 2, 5 and 7 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2005/0041695 to Bordogna, *et al.* in view of U.S. Patent No. 6,741,566 to Furlong, *et al.* The Applicants respectfully disagree in view of amended independent Claim 1.

The Examiner asserts Bordogna fails to teach an Interpacket gap including at least one non-Idle symbol such that the presence of the non-Idle symbol is part of a message. To cure this deficiency, the Examiner cites Figure 2, element 70 and column 2, lines 65-67, of Furlong. (*See Examiner's Final Rejection, page 3.*)

In Furlong, the management side channel frame 70 includes an Inter-Packet gap. (*See Figure 2, element 80.*) The Inter-Packet gap of Furlong may include data (*see element 75 of Figure 2*) but the presence of the data in the Inter-Packet gap provides no indication that the data is part of a message. On the contrary, the data in the Inter-Packet gap of Furlong is denoted by a start of frame delimiter byte and an end of frame delimiter byte. (*See Figure 2 and column 2, line 65, to column 3, line 3.*) Thus, the data in the management side channel frame 70 is set aside in the Inter-Packet gap as data by the delimiters. In Furlong, there is no weight given to the **presence** of the data in the Inter-Packet gap as being part of a message. As such, Furlong fails to teach or suggest an "Interpacket gap includes at least one non-Idle symbol such that the presence of said non-Idle symbol

is part of a message, wherein an Idle symbol is defined according to a packet transmission standard” as recited in amended Claim 1.

Thus, for at least the above reasons, the cited combination of Bordogna and Furlong fails to provide a *prima facie* case of obviousness of amended independent Claim 1. Accordingly, the Applicants respectfully request the Examiner to withdraw the §103(a) rejection of independent Claim 1 and Claims 2, 5 and 7 which depend thereon. Additionally, the Applicants respectfully request issuance of Claims 1, 2, 5 and 7.

### **III. Rejection of Claims 3 and 4 under 35 U.S.C. §103**

The Examiner rejected Claims 3 and 4 under 35 U.S.C. §103(a) as being unpatentable over Bordogna in view of Furlong and in further view of U.S. Application Publication No. 2003/0227947 by Shin, *et al.* The Applicants respectfully disagree.

As asserted above, the cited combination of Bordogna and Furlong does not teach or suggest each element of independent Claim 1. Shin has not even been cited to address Claim 1 but to teach the additional limitations of Claims 3 and 4. (See Examiner's Final Rejection, pages 4-5.) The Applicants fail to see, therefore, where the applied combination of Bordogna and Furlong with Shin provides a *prima facie* case of obviousness of amended independent Claim 1 and Claims 3-4 which depend thereon. The Applicants, therefore, respectfully request the Examiner to withdraw the §103(a) rejection of dependent Claims 3-4 and allow issuance thereof.

#### **IV. Rejection of Claim 6 under 35 U.S.C. §103**

The Examiner has rejected Claim 6 under 35 U.S.C. §103(a) as being unpatentable over Bordogna in view of Furlong, and further in view of U.S. Patent Application Publication No. 2003/0137975 to Song, *et al.* The Applicants respectfully disagree.

As asserted above, the cited combination of Bordogna and Furlong does not teach or suggest each element of amended independent Claim 1. Song has not even been cited to address Claim 1 but to teach the additional limitation of Claim 6. (*See* Examiner's Final Rejection, pages 5-6.) The Applicants fail to see, therefore, where the applied combination of Bordogna and Furlong with Song provides a *prima facie* case of obviousness of amended independent Claim 1 and Claim 6 which depends thereon. The Applicants, therefore, respectfully request the Examiner to withdraw the §103(a) rejection of dependent Claim 6 and allow issuance thereof.

#### **V. Rejection of Claim 8 under 35 U.S.C. §103**

The Examiner rejected Claim 8 under 35 U.S.C. §103(a) as being unpatentable over Bordogna in view of U.S. Patent No. 6,085,248 to Sambamurthy, *et al.* The Applicants respectfully disagree in view of amended independent Claim 8. More specifically, the Applicants fail to find where Bordogna or Sambamurthy, individually or in combination, teach or suggest a packet including an information-carrying portion having at least 16 information bytes encoded in standard symbols **and** at least one non-standard symbol, wherein the standard symbols are defined according to a packet transmission standard. The Applicants respectfully request the Examiner to indicate otherwise if the Examiner disagrees.

As such, the Applicants fail to find where the cited combination of Bordogna and Sambamurthy provides a *prima facie* case of obviousness of amended independent Claim 8. The Applicants, therefore, respectfully request the Examiner to allow issuance of amended independent Claim 8.

#### **VI. Rejection of Claims 9-14 under 35 U.S.C. §103**

The Examiner has rejected dependent Claims 9-14 under 35 U.S.C. §103(a) as being unpatentable over Bordogna in view of Sambamurthy, and further in view of: U.S. Patent Application Publication No. 2003/0235214 to Leroux, *et al.*, for Claims 9-10 and 13; Leroux, and further in view of Shin for Claims 11 and 12; and Leroux, and further in view of Song for Claim 14. The Applicants respectfully disagree.

As asserted above, the Applicants fail to find where the cited combination of Bordogna and Sambamurthy provides a *prima facie* case of obviousness of amended independent Claim 8. The other cited references noted above, Leroux, Shin and Song, have not even been cited to address Claim 8 but to teach the additional limitations of the above dependent Claims. (*See Examiner's Final Rejection, pages 7-9.*) Thus, the Applicants fail to see where the combination of Bordogna and Sambamurthy with Leroux, Shin, Song or a combination thereof, provides a *prima facie* case of obviousness of amended independent Claim 8 and Claims 9-14 which depend thereon. The Applicants, therefore, respectfully request the Examiner to allow issuance of dependent Claims 9-14.

## VII. Rejection of Claims 21-26 under 35 U.S.C. §103

The Examiner has rejected Claim 21 under 35 U.S.C. §103(a) as being unpatentable over Shin, in further view of UK Patent Application No. GB2366161 to Jones. Additionally, the Examiner has rejected Claims 22-26 under 35 U.S.C. §103(a) as being unpatentable over Shin and Jones and in further view of U.S. Application Publication No. 2002/0061012 to Thi, *et al.* The Applicants respectfully disagree in view of amended independent Claim 21.

The Examiner recognizes that Shin does not disclose each element of Claim 21 and cites Jones to disclose that idle symbols are replaced by non-idle symbols in the interpacket gap. (*See Examiner's Final Rejection*, pages 10-11.) Even assuming *arguendo* Jones does teach replacing idle symbols with **non-idle symbols** in an interpacket gap as asserted by the Examiner, the Applicants fail to find how this teaches or suggests replacing a symbol decoded as an Idle symbol with a message symbol **decoded as an Idle symbol**. Thus, the Applicants fail to see where the cited combination of Shin and Jones teach or suggest each element of amended Claim 21 which includes an encoder configured to: substitute at least one message symbol for a symbol decoded as an Idle symbol in an interpacket gap to encode at least a portion of a message into the interpacket gap, wherein the at least one message symbol is decoded as an Idle symbol according to an Ethernet standard.

Thi has not been cited to address replacing symbols in an interpacket gap but to disclose the additional limitations of the above noted dependent Claims. (*See Examiner's Action*, pages 11-12.) The addition of Thi to the combination of Shin and Jones, therefore, does not appear to cure the above noted deficiencies in view of amended Claim 21. The cited combination of Shin, Jones and

Thi, therefore, fails to provide a *prima facie* case of obviousness of amended independent Claim 21 and Claims 22-26 which depend thereon. The Applicants, therefore, respectfully request the Examiner to allow issuance of Claims 21-26.

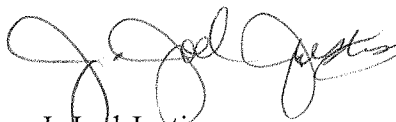
### **VIII. Conclusion**

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-14 and 21-26.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

HITT GAINES, PC

A handwritten signature in black ink, appearing to read "J. Joel Justiss", with a stylized flourish at the end.

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